



November 3, 1999

Mr. Scott Sherwood
County Attorney
Carson County
P.O. Box 947
Panhandle, Texas 79068-0947

OR99-3120

Dear Mr. Sherwood:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127809.

Mr. Arthur L. Born, the requestor, contacted this office for assistance regarding his request to the Carson County Sheriff's Office (the "sheriff") for all documents relating to the death of his daughter, Cynthia Jean Howell, on November 13, 1995. Mr. Born states that he hand-delivered his request to the former sheriff on May 25, 1999. You state that the former sheriff tendered his resignation around the time of Mr. Born's request, and that the new sheriff has no record of the request. You contend, however, that the requested documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed a representative sample of the documents at issue.¹

Based on the information before us, it appears that you did not request an attorney general decision and raise section 552.108 within ten business days of the sheriff's receipt of Mr.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Born's request. *See* Gov't Code § 552.301. Ordinarily, this failure would result in the presumption that the requested documents are public. *See* Gov't Code § 552.302. However, in Open Records Decision No. 586 (1991), we concluded that the need of a governmental body, other than the one that failed to timely comply with the requirements for requesting an attorney general decision, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public.

You contend that the Carson County District Attorney (the "district attorney") has a compelling section 552.108 interest in the requested documents. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." The district attorney has asked you to deny Mr. Born's request on the basis of section 552.108. In a letter submitted to this office, the district attorney states that the release of the documents at issue would interfere with his prosecution of the case. Based upon this representation, we conclude that the release of the documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We further conclude that, in this case, the district attorney's interest in withholding the documents from disclosure is compelling.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the sheriff must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. On behalf of the district attorney, the sheriff may withhold the remaining information from disclosure² under 552.108(a)(1), with the following exception.

We note that among the submitted documents is an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. Open Records Decision No. 525 (1989). Section 11 has been amended to provide that

[t]he records [of an autopsy] are subject to *required* public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted

²Of course, the sheriff may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code §§ 552.007, .352.

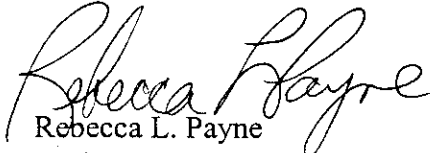
from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76th Leg., R.S., ch 607, § 2. This amendment took effect on September 1, 1999. *Id.* § 3. We conclude that the sheriff must release the autopsy report to the requestor.³

Because we are able to resolve this matter under section 552.108, we do not address your section 552.101 claim at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,


Rebecca L. Payne
Assistant Attorney General
Open Records Division

RLP/KEH/RWP/ch

Ref: ID# 127809

Encl. Submitted documents

cc: Mr. Arthur L. Born
P.O. Box 149
Perryton, Texas 79070
(w/o enclosures)

³The submitted documents do not appear to include photographs or x-rays taken during the autopsy. To the extent that such photographs or x-rays exist, they must be withheld pursuant to article 49.25 of the Code of Criminal Procedure.